



भारत का राजपत्र

The Gazette of India

असाधारण

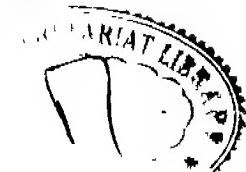
EXTRAORDINARY

भाग II—वृश्च 1

PART II—Section 1

प्राधिकार से प्रकाशित

PUBLISHED BY AUTHORITY



सं. ४] नई विलासी, बृहस्पतिवार, फरवरी ३, १९७७/माघ १४, १८९८

No. ४] NEW DELHI, THURSDAY, FEBRUARY 3, 1977/MAGHA 14, 1898

इस भाग में विभिन्न पक्ष संलग्न दी जाती हैं जिससे कि वह अलग संकलन के रूप में रखा जा सके।

Separate paging is given to this Part in order that it may be filed
as a separate compilation

MINISTRY OF LAW, JUSTICE AND COMPANY AFFAIRS
(Legislative Department)

New Delhi, the 3rd February, 1977/Magha 14, 1898 (Saka)

**THE DISPUTED ELECTIONS (PRIME MINISTER AND
SPEAKER) ORDINANCE, 1977**

No. 4 of 1977

Promulgated by the President in the Twentyeighth Year of the
Republic of India.

An Ordinance to provide for authorities to deal with disputed elections to Parliament in the case of Prime Minister and Speaker of the House of the People and for matters connected therewith.

WHEREAS the House of the People has been dissolved and the Council of States is not in session and the President is satisfied that circumstances exist which render it necessary for him to take immediate action;

NOW, THEREFORE, in exercise of the powers conferred by clause (1) of article 123 of the Constitution, the President is pleased to promulgate the following Ordinance:—

CHAPTER I

PRELIMINARY

1. (1) This Ordinance may be called the Disputed Elections (Prime Minister and Speaker) Ordinance, 1977

Short
title
and
com-
mence-
ment.

(2) It shall come into force at once.

2 In this Ordinance, unless the context otherwise requires,—

(a) "candidate" means a person who has been or claims to have been duly nominated as a candidate at any election;

(b) "costs" means all costs, charges and expenses of, or incidental to, a trial of a petition under this Ordinance;

(c) "Council" means a Council convened under section 4 for the trial of a petition;

(d) "election" means an election in the case of Prime Minister or in the case of speaker;

(e) "election in the case of Prime Minister" means an election to either House of Parliament of a person who holds the office of Prime Minister at the time of such election or is appointed as Prime Minister after such election;

(f) "election in the case of Speaker" means an election to the House of the People of a person who holds the office of Speaker at the time of such election or is chosen as the Speaker for that House after such election;

(g) "petition" means a petition calling in question an election;

(h) "prescribed" means prescribed by rules made under this Ordinance;

(i) "returned candidate" means a candidate whose name has been published under section 67 of the Representation of the People Act, 1951, as duly elected at an election in the case of Prime Minister 43 of 1951 or, as the case may be, an election in the case of Speaker;

(j) each of the expressions defined in the Representation of the People Act, 1951, but not defined in this Ordinance shall have the 43 of 1951 same meaning as in that Act.

CHAPTER II

COUNCILS FOR DISPUTED ELECTIONS

Petitions
in res-
pect of
disputed
elections.

3. No election shall be called in question except by a petition presented in accordance with the provisions of this Ordinance.

Autho-
rity to -
try a
petition.

4 (1) Every petition shall be tried by a Council convened for the purpose by notification in the Official Gazette by the Election Commission.

(2) The Council shall consist of the following members, namely:—

(a) three members nominated by the President of whom one shall be the Chief Justice, or a retired Chief Justice, of the Supreme Court of India and another a person who, in the opinion of the President has knowledge of election laws;

(b) three members elected by the members of the House of the People from amongst themselves, and

(c) three members elected by the members of the Council of States from amongst themselves.

(3) The Chairman and Vice-Chairman of the Council shall be appointed by the President from amongst the members thereof.

(4) The Chairman, Vice-Chairman and other members of a Council shall hold office as such until the disposal by the Council of the petition for the trial of which it has been convened.

Provided that—

(a) the Chairman, Vice-Chairman or any other member may by writing under his hand addressed to the President resign his office;

(b) a member elected by a House of Parliament shall cease to hold office as such upon his ceasing to be a member of that House

(5) Any casual vacancy in the office of the Chairman or the Vice-Chairman or any other member of the Council shall be filled in accordance with the provisions of sub-section (2).

(6) The conditions of service of the Chairman, Vice-Chairman and other members of a Council shall be such as may be prescribed.

5. If, during the course of the trial of a petition, any member of the Council trying the petition is absent or is for any reason unable to perform his functions or has relinquished his membership or has died, the remaining members of the Council may continue the trial of the petition:

Council to exercise functions notwithstanding vacancies

Provided that the total number of members of the Council holding the trial is not less than five.

6 When any person nominated or, as the case may be, elected to fill a casual vacancy in a Council trying a petition joins the Council, the trial of the petition shall be continued thereafter as if the member so nominated or elected had been a member of the Council from the commencement of the trial of such petition:

Fresh trial not necessary upon filling up of a casual vacancy in the Council

Provided that the Council may, if it thinks fit, recall and re-examine any of the witnesses already examined.

7. No act, proceeding, order or decision of a Council shall be invalidated merely by reason of any irregularity in the procedure of the Council not affecting the merits of the case.

Acts or proceedings of a Council not to be invalidated.

CHAPTER III

PRESENTATION OF PETITIONS IN RESPECT OF DISPUTED ELECTIONS

8 (1) A petition calling in question any election may be presented on one or more of the grounds specified in sub-section (1) of section 100 and section 101 of the Representation of the People Act, 1951, to the Election Commission by any candidate at such election or any elector within forty-five days from, but not earlier than, the date of election of the returned candidate, or if there are more returned candidates than one at the election and the dates of their election are different, the last of those dates:

Provided that a petition calling in question the election of a person who does not hold the office of Prime Minister or, as the case may be, Speaker of the House of the People at the time of such election and who is appointed or chosen to that office after such election, may be presented within forty-five days from the date on which such person was appointed as the Prime Minister or chosen as the Speaker of the House of the People.

Explanation—In this sub-section, “elector” means a person who was entitled to vote at the election to which the petition relates, whether he has voted at such election or not

(2) A petition shall be deemed to have been presented to the Election Commission when it is delivered to the Election Commission or to such other officer as may be appointed by it in this behalf—

- (a) by the person making the petition, or
- (b) by a person authorised in writing in this behalf by the person making the petition.

(3) Every petition shall be accompanied by as many copies thereof as there are respondents mentioned in the petition and one more copy for the use of the Election Commission, and every such copy shall be attested by the petitioner under his own signature to be a true copy of the petition.

(4) At the time of presenting a petition, the petitioner shall deposit with the Election Commission in such manner as may be prescribed a sum of two thousand rupees as security for costs.

(5) The Council trying a petition may at any time during the course of the trial of the petition call upon the petitioner to give such further security for costs as it may direct.

(6) No person shall be entitled to be joined as a respondent to a petition under sub-section (3) of section 13 unless he has given such security for costs as the Council may direct.

9. A petitioner shall join as respondents to his petition—

Parties
to the
petition.

(a) where the petitioner, in addition to claiming a declaration that the election of all or any of the returned candidates is void, claims a further declaration that he himself or any other candidate has been duly elected, all the contesting candidates other than the petitioner, and where no such further declaration is claimed, all the returned candidates; and

(b) any other candidate against whom allegations of any corrupt practice are made in the petition.

10 (1) A petition—

Contents
of peti-
tion

(a) shall contain a concise statement of the material facts on which the petitioner relies;

(b) shall set forth full particulars of any corrupt practice that the petitioner alleges, including as full a statement as possible of the names of the parties alleged to have committed such corrupt practice and the date and place of the commission of each such practice; and

5 of 1908.

(c) shall be signed by the petitioner and verified in the manner laid down in the Code of Civil Procedure, 1908, for the verification of pleadings:

Provided that where the petitioner alleges any corrupt practice, the petition shall also be accompanied by an affidavit in the prescribed form in support of the allegation of such corrupt practice and the particulars thereof.

(2) Any schedule or annexure to the petition shall also be signed by the petitioner and verified in the same manner as the petition.

11. A petitioner may, in addition to claiming a declaration that the election of all or any of the returned candidates is void, claim a further declaration that he himself or any other candidate has been duly elected.

Relief
that may
be claim-
ed by the
petitioner

12. (1) The Election Commission shall as soon as may be after the receipt of a petition under section 8 take such steps as may be prescribed for convening a Council for trying the petition.

Procedure
on re-
ceiving
petitions.

(2) Where more petitions than one have been received under section 8 in respect of the same election, a single Council shall be convened for the trial of such petitions and such Council may in its discretion try them separately or in one or more groups

CHAPTER IV

TRIAL OF PETITIONS

13. (1) Subject to any rules made in this behalf, the Council for the trial of any petition shall hold the trial at New Delhi.

Trial of
petitions

(2) The Council shall dismiss the petition,

(a) if the petition has not been presented within the period specified in sub-section (1) of section 8;

(b) if the petition does not comply with the provisions of sub-section (3) or sub-section (4) of section 8 or section 9,

Explanation—An order dismissing a petition under this sub-section shall be deemed to be an order made under clause (a) of section 20.

(3) Any candidate not already a respondent to a petition shall, upon application made by him to the Council within fourteen days from the date of commencement of the trial and subject to any order as to security for costs which may be made by the Council, be entitled to be joined as a respondent.

Explanation—For the purposes of this sub-section and of section 19, the trial of a petition shall be deemed to commence on the date fixed for the respondents to appear before the Council and answer the claim or claims made in the petition.

(4) The Council may, upon such terms as to costs and otherwise as it may deem fit, allow the particulars of any corrupt practice alleged in the petition to be amended or amplified in such manner as may in its opinion be necessary for ensuring a fair and effective trial of the petition,

but shall not allow any amendment of the petition which will have the effect of introducing particulars of a corrupt practice not previously alleged in the petition.

(5) The trial of a petition shall, so far as is practicable consistently with the interests of justice in respect of the trial, be continued from day to day until its conclusion, unless the Council finds the adjournment of the trial beyond the following day to be necessary for reasons to be recorded.

(6) Every petition shall be tried as expeditiously as possible and endeavour shall be made to conclude the trial within six months from the date of commencement of the trial.

Proce-
dure.

14 (1) The Chairman of the Council or in his absence the Vice-Chairman of the Council shall preside at the sittings of the Council.

(2) Subject to the provisions of this Ordinance and of any rules made thereunder, the Council shall regulate its own procedure for the trial of a petition.

Evi-
dence,
etc.

15. (1) Subject to the provisions of this section, for the purposes of trial of a petition the Council may require any person who in its opinion is able to furnish information or produce documents relevant to the trial to furnish any such information or produce any such document.

(2) For the purposes of any such trial, the Council shall have all the powers of a Civil Court while trying a suit under the Code of Civil Procedure, 1908, in respect of the following matters, namely:—

5 of 1908

- (a) summoning and enforcing the attendance of any person and examining him on oath;
- (b) requiring the discovery and production of any document;
- (c) receiving evidence on affidavits;
- (d) requisitioning any public record or copy thereof from any court or office;
- (e) issuing commissions for the examination of witnesses or documents;
- (f) such other matters as may be prescribed.

(3) Any proceeding before the Council shall be deemed to be a judicial proceeding within the meaning of section 193 of the Indian Penal Code

45 of 1860.

Secrecy
of voting
not to
be in-
fringed.

Answer-
ing of
criminat-
ing ques-
tions and
certif-
cate of
indem-
nity

16 No witness or other person shall be required to state for whom he has voted at an election.

17 (1) No witness shall be excused from answering any question as to any matter relevant to a matter in issue in the trial of a petition upon the ground that the answer to such question may criminate or may tend to criminate him, or that it may expose or may tend to expose him to any penalty or forfeiture:

Provided that—

(a) a witness, who answers truly all questions which he is required to answer shall be entitled to receive a certificate of indemnity from the Council; and

(b) an answer given by a witness to a question put by or before the Council shall not, except in the case of any criminal proceeding for perjury in respect of the evidence, be admissible in evidence against him in any civil or criminal proceeding.

(2) When a certificate of indemnity has been granted to any witness, it may be pleaded by him in any court and shall be a full and complete defence to or upon any charge under Chapter IXA of the Indian Penal Code or Part VII of the Representation of the People Act, 1951, arising out of the matter to which such certificate relates, but it shall not be deemed to relieve him from any disqualification in connection with an election imposed by this Ordinance or any other law

18. The reasonable expenses incurred by any person in attending to give evidence before the Council may be allowed by it to such person, of witness and shall, unless the Council otherwise directs, be deemed to be part of the costs.

19. (1) When in a petition a declaration that any candidate other than the returned candidate has been duly elected is claimed, the returned candidate or any other party may give evidence to prove that the election of such candidate would have been void if he had been the returned candidate and a petition had been presented calling in question his election:

Provided that the returned candidate or such other party, as aforesaid shall not be entitled to give such evidence unless he has, within fourteen days from the date of commencement of the trial, given notice to the Council of his intention to do so and has also given the security and the further security referred to in sub-sections (4), (5) and (6) respectively of section 8.

(2) Every notice referred to in sub-section (1) shall be accompanied by the statement and particulars required by section 10 in the case of a petition and shall be signed and verified in like manner.

20. At the conclusion of the trial of a petition the Council shall make an order—

(a) dismissing the petition; or

(b) declaring the election of all or any of the returned candidates to be void; or

(c) declaring the election of all or any of the returned candidates to be void and the petitioner or any other candidate to have been duly elected.

Other
orders
to be
made
by the
Council.

21. (1) At the time of making an order under section 20, the Council shall also make an order—

(a) where any charge is made in the petition of any corrupt practice having been committed at the election, recording—

(i) a finding whether any corrupt practice has or has not been proved to have been committed at the election, and the nature of that corrupt practice; and

(ii) the names of all persons, if any, who have been proved at the trial to have been guilty of any corrupt practice and the nature of that practice; and

(b) fixing the total amount of costs payable and specifying the persons by and to whom costs shall be paid:

Provided that a person who is not a party to the petition shall not be named in the order under sub-clause (ii) of clause (a) unless—

(a) he has been given notice to appear before the Council and to show cause why he should not be so named; and

(b) if he appears in pursuance of the notice, he has been given an opportunity of cross-examining any witness who has already been examined by the Council and has given evidence against him, of calling evidence in his defence and of being heard.

(2) In this section and in section 22, the expression "agent" has the same meaning as in section 123 of the Representation of the People Act, 43 of 1951, 1951.

Grounds
for dec-
laring
election
to be
void.

22 (1) Subject to the provisions of sub-section (2), if the Council is of opinion—

(a) that on the date of his election a returned candidate was not qualified, or was disqualified, to be chosen to fill the seat under the Constitution or the Representation of the People Act, 1951 or 43 of 1951, his Ordinance or the Government of Union Territories Act, 1963; or 20 of 1963.

(b) that any corrupt practice has been committed by a returned candidate or his election agent or by any other person with the consent of a returned candidate or his election agent; or

(c) that any nomination has been improperly rejected; or

(d) that the result of the election, in so far as it concerns the returned candidate, has been materially affected—

(i) by the improper acceptance of any nomination, or

(ii) by any corrupt practice committed in the interests of the returned candidate by an agent other than his election agent, or

(iii) by the improper reception, refusal or rejection of any vote or the reception of any vote which is void, or

(iv) by any non-compliance with the provisions of the Constitution or of this Ordinance or of any rules or orders made under this Ordinance,

the Council shall declare the election of the returned candidate to be void.

(2) If in the opinion of the Council a returned candidate has been guilty by an agent, other than his election agent, of any corrupt practice but the Council is satisfied—

(a) that no such corrupt practice was committed at the election by the candidate or his election agent, and every such corrupt practice was committed contrary to the orders, and without the consent, of the candidate or his election agent;

(b) that the candidate and his election agent took all reasonable means for preventing the commission of corrupt practices at the election; and

(c) that in all other respects the election was free from any corrupt practice on the part of the candidate or any of his agents, then the Council may decide that the election of the returned candidate is not void.

23. If any person who has lodged a petition has, in addition to calling in question the election of the returned candidate, claimed a declaration that he himself or any other candidate has been duly elected and the Council is of opinion—

Grounds for which a candidate other than the returned candidate may be declared to have been elected.

(a) that in fact the petitioner or such other candidate received a majority of the valid votes; or

(b) that but for the votes obtained by the returned candidate by corrupt practices the petitioner or such other candidate would have obtained a majority of the valid votes,

the Council shall after declaring the election of the returned candidate to be void declare the petitioner or such other candidate, as the case may be, to have been duly elected.

24. If during the trial of a petition it appears that there is an equality of votes between any candidates at the election and that the addition of a vote would entitle any of those candidates to be declared elected, then—

Proce-
dure in
case of an
equality of
votes.

(a) any decision made by the returning officer under the provisions of the Representation of the People Act, 1951, shall in so far as it determines the question between those candidates, be effective also for the purposes of the petition; and

(b) in so far as the question is not determined by such a decision the Council shall decide between them by lot and proceed as if the one on whom the lot then falls had received an additional vote.

**Decision
of Coun-
cil to be
in accor-
dance
with the
view of
majority**

25. If during the trial of a petition there is a difference of opinion among the members of the Council on any matter or if at the conclusion of the trial there is a difference of opinion among them regarding the orders to be made under section 20 or section 21, the opinion of the majority shall prevail and the orders of the Council shall be expressed in terms of the views of the majority.

Provided that where the members are equally divided on any matter or with regard to any order to be made, the matter shall be decided or, as the case may be, the order shall be made, in accordance with the views of the members who concur with the Chairman.

**Communi-
cation of
orders of
the
Council**

26 The Council shall, as soon as may be after the conclusion of the trial of a petition, intimate the substance of the decision to the Election Commission and the Speaker or the Chairman, as the case may be, of the House of Parliament and, as soon as, may be thereafter, shall send to the Election Commission an authenticated copy of the decision.

Costs

27. Costs shall be in the discretion of the Council.

Provided that where a petition is dismissed under clause (a) of section 20, the returned candidate shall be entitled to the costs incurred by him in contesting the petition and accordingly the Council shall make an order for costs in favour of the returned candidate.

**Orders
of Coun-
cil to be
final**

28. No order made by a Council under this Ordinance shall be called in question in any court.

**Effect of
orders of
Council**

29. (1) An order made by a Council under this Ordinance shall take effect as soon as it is pronounced by the Council.

(2) Where by an order under section 20 the election of a returned candidate is declared to be void, acts and proceedings in which that returned candidate has, before the date thereof, participated as a member of Parliament or, as the Prime Minister or as the Speaker of the House of the People shall not be invalidated by reason of that order, nor shall such candidate be subjected to any liability or penalty on the ground of such participation.

**With-
drawal
and
abate-
ment of
petitions**

30 The provisions of sections 109 to 116 (both inclusive) of the Representation of the People Act, 1951, relating to withdrawal and abatement of election petitions shall, so far as may be, apply in relation to withdrawal and abatement of petitions under this Ordinance subject to the modifications that the references therein to an election petition, High Court and petitioner shall be construed as references to a petition under this Ordinance, the Council for hearing such petition and the petitioner in respect of such petition respectively.

CHAPTER V

MISCELLANEOUS

31. (1) If in any order as to costs under the provisions of this Ordinance there is a direction for payment of costs by any party to any person, such costs shall, if they have not been already paid, be paid in full, or so far as possible, out of the security deposit and the further security deposit, if any, made by such party under this Ordinance on an application made in writing in that behalf within a period of one year, from the date of such order to the Election Commission by the person in whose favour the costs have been awarded.

Payment
of costs
out of
security
deposit
and
return of
such
deposits

(2) If there is any balance left of any of the said security deposits after payment under sub-section (1) of the costs referred to in that sub-section, such balance, or where no costs have been awarded or no application as aforesaid has been made within the said period of one year, the whole of the said security deposits may, on an application made in that behalf in writing to the Election Commission by the person by whom the deposits have been made, or if such person dies after making such deposits, by the legal representative of such person, be returned to the said person or to his legal representative, as the case may be.

32. Any order as to costs under the provisions of this Ordinance may be produced before the principal civil court of original jurisdiction within the local limits of whose jurisdiction any person directed by such order to pay any sum of money has a place of residence or business, or where such place is within a presidency-town, before the court of small causes having jurisdiction there, and such court shall execute the order or cause the same to be executed in the same manner and by the same procedure as if it were a decree for the payment of money made by itself in a suit:

Execution
of orders
as to
costs

Provided that where any such costs or any portion thereof may be recovered by an application made under sub-section (1) of section 31, no application shall lie under this section within a period of one year from the date of such order unless it is for the recovery of the balance of any costs which has been left unrealised after an application has been made under that sub-section owing to the insufficiency of the amount of the security deposits referred to in that sub-section

33. (1) The Central Government may make rules for carrying out the purposes of this Ordinance.

Power to
make
rules

(2) In particular and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:—

(a) the steps to be taken for convening a Council and for filling of casual vacancies in a Council;

(b) the deposit or further deposit to be made by the petitioner as security for the costs;

(c) the procedure for the trial of a petition under this Ordinance;

(d) the appointment of officers and other employees for assisting the Councils in the discharge of their functions and the conditions of service of such officers and other employees;

(e) the custody of deposits made under this Ordinance, the payment of costs out of such deposits on an application made under section 31 and other matters relating to the disposal of such applications,

(f) the fees, if any, payable in respect of any petition or application under this Ordinance;

(g) any other matter which has to be prescribed by or provided for by rules made under this Ordinance.

(3) Every rule made by the Central Government under this Ordinance shall be laid, as soon as may be after it is made, before each House of Parliament while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session, or the successive sessions aforesaid, both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be, so however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule

FAKHRUDDIN ALI AHMED,

President.

K K. SUNDARAM,
Secy. to the Govt. of India.